

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

BKY No. 03-31304

ADV No. 04-3112

Alan Curtis Gruidl and Jacqueline Gruidl,

Debtors.

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Randall L. Seaver, Trustee,

Plaintiff,

vs.

**TRUSTEE'S OBJECTION TO  
MOTION FOR LEAVE TO  
WITHDRAW OF FOLEY &  
MANSFIELD, PLLP**

Gregory A. Wade, Richard T. Wade, and  
Two Brothers Entertainment, Inc.,

Defendants.

TO: Thomas J. Lallier, Samuel S. Rufer, Joseph M. Barnett, Foley & Mansfield, P.L.L.P., 250 Marquette Avenue, Suite 1200, Minneapolis MN 55401; Office of the United States Trustee, 1015 U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415.

Randall L. Seaver, Trustee and Plaintiff in the above adversary proceeding, objects to the Motion of Foley & Mansfield, PLLP, for Leave to Withdraw as counsel to Defendants Gregory A. Wade, Richard T. Wade and Two Brothers Entertainment, Inc.

**FACTS**

The Trustee commenced this adversary proceeding on April 8, 2004 to collect Defendants' obligations on certain notes and guaranties in favor of the Debtor, Alan Gruidl. The Trustee served the Complaint on Richard Wade and Two Brothers Entertainment, Inc. on April 14, 2004 and served Gregory Wade on May 7, 2004. On May 7, 2004, Joseph M. Barnett contacted Andrea M. Hauser,

counsel for the Trustee, to obtain an extension of time to file an answer on behalf of Richard T. Wade.

Foley & Mansfield, PLLP filed an Answer on behalf of Defendants Gregory Wade, Richard Wade , and Two Brothers Entertainment, Inc. on May 21, 2004, denying all liability on the notes and guaranties. The Answer asserted that Defendants Richard and Gregory Wade did not execute the Contract Assumption Agreement assuming the Notes and did not execute personal guaranties of the Notes. Defendants' Answer stated that the Contract Assumption Agreement, referenced as Exhibit 1 to the Complaint, was not attached to the Complaint and was illegible.

On May 24, 2004, Counsel for the Trustee sent Foley & Mansfield another copy of Contract Assumption Agreement, Exhibit 1 to the Complaint, with the Leasehold Note, the Equipment Note, and the Non-Compete Note. *See* May 24, 2004 letter from Andrea M. Hauser to Thomas J. Lallier and Samuel S. Rufer, attached as Exhibit A to August 24, 2004 Affidavit of Andrea M. Hauser, filed herewith (hereinafter, "Hauser Affidavit"). The copy of the Contract Assumption Agreement appeared to have the signatures of Defendants Gregory A. Wade and Richard T. Wade. Defendants did not amend the Answer or otherwise respond.

On June 24, 2004, the Trustee served his First Request for Production of Documents, First Set of Interrogatories, and First Request for Admissions on Defendants' counsel, Thomas J. Lallier and Samuel S. Rufer, Foley & Mansfield, PLLP. *See* Exhibits B, C and D to Hauser Affidavit. The Trustee sought Defendants' admissions that the Contract Assumption Agreement contained their signatures and that they had signed the guaranties of the three Notes. *See* Exhibit D to Hauser Affidavit, Nos. 2, 3, 4, 8, 9, 20, and 21. On July 27, 2004, the Trustee received Defendants'

Response to Plaintiff's First Request for Admissions in which all requests for admissions were denied. *See* Exhibit E to Hauser Affidavit.

In response to the request of Mr. Rufer for additional time to respond to discovery, Andrea M. Hauser, counsel for the Trustee, agreed to extend the time to complete discovery to July 30, 2004. The Trustee received no additional discovery responses from Defendants.

On August 9, 2004, Andrea Hauser set a discovery conference under Bankruptcy Rule 7037 and Local Rule 7037-1 for August 11, 2004. *See* Exhibit F to Hauser Affidavit. Foley & Mansfield filed and served its Motion for Leave to Withdraw as counsel to Defendants on August 10, 2004.

In the discovery conference on August 11, 2004, Joseph M. Barnett informed Andrea Hauser that Defendants no longer wanted Foley & Mansfield to represent them in this litigation and that Defendants had produced no documents and had not responded to the First Set of Interrogatories. *See* August 11, 2004 letter from Andrea M. Hauser to Joseph M. Barnett, Exhibit G to Hauser Affidavit.

On August 12, 2004, the Trustee obtained copies of the Guaranties of the three Notes signed by Defendants. *See* Exhibits H, I and J to Hauser Affidavit. The Defendants' signatures on the Contract Assumption Agreement and the Guaranties indicate that Defendants made false statements in their Answer to the Complaint filed with the Court and in their Response to the Plaintiff's First Set of Interrogatories.

On August 24, 2004, the Trustee filed and served his Motion to Compel Discovery and for Sanctions. The Trustee objects to the withdrawal of Foley & Mansfield, PLLP as counsel for

Defendants until such time as Defendants provide a complete response to the Trustee's discovery requests and the discovery dispute is resolved.

WHEREFORE, the Trustee requests an order of the Court as follows:

1. Denying the Motion of Foley & Mansfield, PLLP for leave to withdraw as counsel for Defendants until such time as Defendants have responded to the Trustee's discovery requests in full and the discovery dispute is resolved; and
2. For such other and further relief as the Court deems just and equitable.

**FULLER, SEAVER & RAMETTE, P.A.**

Dated: August 24, 2004

By: /e/ Andrea M. Hauser

Randall L. Seaver	152882
Andrea M. Hauser	207469
101 West Burnsville Parkway, Suite 201	
Burnsville, MN 55337	
(952) 890-0888	

Attorneys for Randall L. Seaver, Trustee

### **VERIFICATION**

I, Andrea M. Hauser, counsel for Randall L. Seaver, Trustee, the moving party named in the foregoing Objection to Motion for Leave to Withdraw, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on August 24, 2004

/e/ Andrea M. Hauser  
Andrea M. Hauser

## UNSWORN CERTIFICATE OF SERVICE

I, Andrea M. Hauser, declare under penalty of perjury that on August 24, 2004, I caused to be served the following documents:

1. Trustee's Motion to Compel Response to Discovery and for Sanctions;
2. Local Rule 7037-1 Statement;
3. Memorandum in Support of Trustee's Motion to Compel Discovery Response;
4. Affidavit of Andrea M. Hauser;
5. Proposed Order; and
6. Objection to Motion for Leave to Withdraw

by first-class mail upon following persons and entities:

Thomas J. Lallier, Esq.  
Samuel S. Rufer, Esq.  
Joseph Barnett, Esq.  
Foley & Mansfield, PLLP  
250 Marquette Avenue  
Suite 1200  
Minneapolis MN 55401

Office of the United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis MN 55415

**FULLER, SEAVER & RAMETTE, P.A.**

Executed on August \_24, 2004

By: /e/ Andrea M. Hauser

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12400 Portland Avenue South  
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